

## **Felix Smith: My Interest In and Love for the Public Trust**

My interest in the Public Trust goes back to looking at old maps of San Francisco Bay showing city streets and blocks in unfilled areas between Hunters Point and Candlestick Point and wondering why do they want to fill the Bay? Because I lived only a couple of block from the Bay, I spent a lot of time there. I walked the shore, dug claims for bait and walked its marshes. I fished for perch, smelt, shark and striped bass. I hunted Blue Bill and Canvasback ducks on the Bay. I remember the shrimpers – fisherman selling their shrimp and other fish on the shores of Indian basin.

Since time of the gold rush filling in the shallows of San Francisco Bay had been an on going activity. The shores of San Francisco, San Mateo, Alameda, Contra Costa, and Marin counties had under gone great change. More filling was proposed. One proposal was to tear down San Bruno Mountain and use it to fill parts of the Bay. This activity called tideland reclamation (actually tideland destruction) was going to add land for development. And in doing so acres of fish and wildlife habitat were going to be destroyed in the process. Projections made at the time showed much of the Bay's shallow waters filled in leaving only navigation channels. By the late 1950s, people started to take notice. Then came along 3 independent women, Kay Kerr, Sylvia McLaughlin and Esther Guilick from Berkeley and the East Bay with Save the Bay formed in 1961.

I have been asked what does the Public Trust cover regarding fish or wildlife? My reply; for Chinook salmon and Steelhead trout, it is an aquatic ecosystem that provides every thing necessary (habitat components) to support healthy populations to meet various life history needs. It includes cool clean freshwater of rivers and streams for spawning, egg incubation and rearing of young and juveniles along with plenty of food and cover. It includes a migration route downstream to and through the Delta - San Francisco Bay to their Pacific Ocean feeding grounds. It includes easy access for adults migrating to their natal rivers and stream to spawn thereby starting the next generation. For Bald Eagles it is an aquatic ecosystem and terrestrial system that provides every thing necessary (habitat components) to support its various life history needs. For waterfowl it is a marshland ecosystem (habitat components) that provides every thing necessary to support healthy populations and to meet their life history needs. For our fishes it is an aquatic ecosystem that provides every thing necessary (habitat components) to support the various species life history needs from the egg to a breeding adult. At Mono Lake it is tons of algae and other microscope plants that are fed upon by Brine shrimp which in turn are food for a vast number of breeding California gull and for Eared Grebes and the Red-necked Phalarope that stop there to fatten up for the next leg of their migration. For striped bass it is an aquatic ecosystem and environment that provides every thing necessary to support a food chain to sustain a healthy and viable population and its life history needs.

My reference for the above is (also common sense) a finding of the Mark v. Whitney (6 C.3d 251- Dec. 1971) court, "There is a growing public recognition that one of the most

important public uses of the tidelands – a use encompassed within the tidelands trust,- is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.” This same Public Trust thinking would apply to Lake Tahoe and Clear Lake as well as other lakes of the state. It would also apply to the smallest spring and rivulet to the Sacramento and San Joaquin Rivers and their respective tributaries.

Over the years the struggle to protect stream flow and our anadromous fisheries has been between with those who wanted to protect them for their fish and wildlife, outdoor recreation, boating, commercial and aesthetic values and those who wanted to build more dams and divert most if not all the water south of the Delta. On the San Joaquin Valley’s east side tributaries to the San Joaquin River include new dams, i.e., New Melones on the Stanislaus, New Don Pedro on the Tuolumne and New Exchequer on the Merced replaced older facilities. Flows released from these facilities were inadequate to meet the needs of Chinook salmon and steelhead trout. And in my opinion remain so to this day.

Large scale farming interests on the southwestern portion of the San Joaquin Valley had their eyes on Northern and Central California water. They viewed the water not being used by agriculture or by cities as being theirs for the taking for use on some of the driest and mineralized and salt laden soils of the Southern San Joaquin Valley. The irrigation of some of such soils with a drainage problem lead to the Kesterson NWR - selenium contaminated habitat that killed 1,000s upon 1,000s of migratory birds. Resident birds, mammals, reptiles and fish were also impacted. This selenium contaminated habitat and with its evidence of deformed birds became known as the Kesterson syndrome. The selenium and salt laden drainage impacted soils about 379,000 acres should not be irrigated.

One major disaster occurred on the Trinity River. Within a few years, after large quantities of water was transferred out of the Trinity River Basin (to the San Joaquin Valley), the population of Coho and Chinook salmon and steelhead trout crashed. Very low numbers of these fish were returning to the river. It has taken 35 to 40 years of privately funded lawsuits to increased stream flow and along with operational changes helped restore the numbers of these species back to a level of respectability.